Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Misuse of Internet Protocol (IP) Captioned Telephone Service	)	CG Docket No. 13-24
	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	

To: Secretary, FCC
For: Chief, Consumer and Governmental Affairs Bureau

COMMENTS OF HAMILTON RELAY, INC.

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SUMMARY

Hamilton Relay, Inc. strongly supports the petitions for reconsideration filed by Sprint Corporation in response to 1) the Commission's decision to arbitrarily impose a 10 percent rate cut to the reimbursement rate for providing IP Captioned Telephone Service ("IP CTS"); and (2) the Commission's *Declaratory Ruling*, without appropriate notice and comment, authorizing the exclusive use of automated speech recognition ("ASR-only") to provide IP CTS.

The Commission should reconsider its *Report and Order* and reinstate the 2017-2018 IP CTS rate pending further consideration of the numerous substantive rate issues set forth in the companion *Further Notice of Proposed Rulemaking* ("*Further Notice*"). In addition, the Commission should delay processing of ASR-only IP CTS service offerings until related issues raised in the *Further Notice* and *Notice of Inquiry* have been addressed.

To the extent that the Commission processes any ASR-only certification applications, it should seek comment on such applications in order to develop a detailed record confirming that the proposed ASR-only service satisfies the requirements of Section 225 of the Communications Act of 1934, as amended, as well as the mandatory minimum standards, including emergency call handling requirements, set forth in the Commission's rules. Such reviews should include the solicitation of public comment from consumers and other stakeholders. To evaluate such applications, the Commission should seek comment on the adoption of the "Temporary Application Framework" suggested by consumer groups.

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Comments of Hamilton Relay, Inc.

Hamilton Relay, Inc. ("Hamilton"), by its counsel, hereby submits these comments in support of (1) the Petition for Reconsideration ("Rate Petition") filed by Sprint Corporation ("Sprint")[1] in response to the Commission's decision to arbitrarily impose a 10 percent rate cut to the reimbursement rate for providing IP Captioned Telephone Service ("IP CTS");[2] and (2) the Petition for Clarification or, in the Alternative, Reconsideration ("ASR Petition") filed by Sprint[3] in response to the Commission's *Declaratory Ruling*, without appropriate notice and comment,

[1] Sprint Corporation, Petition for Reconsideration, CG Docket Nos. 13-24 & 03-123 (filed July 27, 2018) ("Sprint Rate Petition").

[2] *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, CG Docket Nos. 13-24 & 03-123, FCC 18-79, ¶ 24 (rel. June 8, 2018). Hamilton refers to ¶¶ 1-47 of the item as the "*Report and Order*," ¶¶ 48-66 as the "*Declaratory Ruling*," and ¶¶ 67-154 as the "*Further Notice/NOI*" throughout these comments.

[3] Sprint Corporation, Petition for Clarification or, in the Alternative, Reconsideration, Inc., CG Docket Nos. 13-24 & 03-123 (filed July 9, 2018) ("Sprint ASR Petition"). The Commission sought comment on the petitions by Public Notice dated August 6, 2018. *See Consumer and Governmental Affairs Bureau Seeks Comment on Sprint Petitions Regarding the Report and Order and Declaratory Ruling on Internet Protocol Captioned Telephone Service*, Public Notice, DA 18-181 (CGB rel. Aug. 6, 2018); *see also* 83 Fed. Reg. 42,630 (Aug. 23, 2018); *Consumer and Governmental Affairs Bureau Announces Comment Deadlines for Filing Responses to Sprint Petitions Regarding Internet Protocol Captioned Telephone Service*, Public Notice, DA 18-893 (CGB rel. Aug. 28, 2018).

authorizing the exclusive use of automated speech recognition ("ASR-only") to provide IP CTS. Hamilton shares Sprint's concerns and urges the Commission to reconsider its decision to arbitrarily lower IP CTS rates. Hamilton agrees that, in order to stabilize service to consumers and avoid market exit by industry providers, the Commission should freeze the IP CTS compensation rate at the 2017-2018 level until it resolves outstanding issues related to quality and cost.

Hamilton also agrees with Sprint that the *Declaratory Ruling* was "an improper vehicle for determining that ASR is eligible as an IP CTS service for compensation from the TRS Fund."[4] Not only was the *Declaratory Ruling* procedurally improper, as Hamilton and others have argued previously,[5] the *Declaratory Ruling* left important questions unanswered regarding the quality of captions that may be generated through ASR-only captioning, as well as the capabilities of ASR-only providers to handle emergency communications. These consumer safety and quality issues must be addressed before the Commission permits the use of ASR-only IP CTS by the public.

Accordingly, the Commission should reconsider its *Report and Order and Declaratory Ruling* and reinstate the previous rate pending further consideration of rate issues, and delay processing of ASR-only service offerings until related issues raised in the *Further Notice/NOI* have been addressed.

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[4] Sprint ASR Petition at 14.

[5] *Ex Parte* Letter from David A. O'Connor, Counsel for Hamilton Relay, Inc., to Marlene H. Dortch, CG Docket Nos. 13-24, 03-123, at 1-3 (filed May 24, 2018) ("May 24 *Ex* Parte"); *Ex Parte* Letter from Rebekah P. Goodheart, Counsel for CaptionCall, LLC, to Marlene H. Dortch, CG Docket Nos. 13-24, 10-51, 03-123, at 2 (filed May 29, 2018); May Consumer Groups *Ex Parte* Letter from Blake E. Reid, Counsel for Telecommunications for the Deaf and Hard of Hearing, Inc., Hearing Loss Association of America, and Gallaudet University Technology Access Program, CG Docket Nos. 13-24, 03-123, at 2 (May 25, 2018) ("May Consumer Groups *Ex Parte*").

I. The *Report and Order* Was Premature and Lacked a Reasoned Basis

The rate cuts set forth in the *Report and Order* were based on flawed cost data from the TRS Fund Administrator that failed to account for the many outstanding policy issues confronting the Commission, including service quality. Specifically, the Commission based its interim rate cuts on IP CTS data collected without regard to whether the data included all legitimate costs of providing the service, even though the *Further Notice/NOI* provided an opportunity for the Commission to receive comment and determine, on the facts presented, what costs are reasonable for IP CTS.[6] Rather than seeking comment on "setting interim rates for IP CTS compensation, much less the specific interim rates that were adopted,"[7] the Commission compounded the agency's error by failing to include important service quality issues in the *Further Notice*, instead relegating those issues to an *NOI* whose timetable for resolution could take years.[8]

Sprint rightly observed that the Commission should have waited to establish "any cost-based rates, including interim rates," until receiving comment on the important questions raised in the *Further Notice/NOI*:

> Among other benefits, this approach would enable current providers to supply the Commission with concrete information regarding whether they would have to decrease service quality or, worse yet, exit the market if the proposed 'cost-based' methodology were adopted.[9]

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[6] *See, e.g.*, Comments of Hamilton Relay, Inc., CG Docket Nos. 03-123, 10-51, at 4 (filed May 29, 2018); *Ex Parte* Letter from Helgi C. Walker and David A. O'Connor, Counsel for Hamilton Relay, Inc., to Marlene H. Dortch, CG Docket Nos. 13-24, 03-123, at 4 (filed Nov. 14, 2017).

[7] Sprint Rate Petition at 4.

[8] *See, e.g.*, *Ex Parte* Notice from David A. O'Connor, Counsel for Hamilton Relay, Inc., to Marlene H. Dortch, CG Docket Nos. 13-24, 03-123, at 1 (filed May 30, 2018) (urging the Commission to move questions related to IP CTS service quality and performance goals a Further Notice of Proposed Rulemaking rather than postpone addressing them through a Notice of Inquiry) ("May 30 *Ex Parte*").

[9] Sprint Rate Petition at 5.

The Commission's interim rate cuts represent a two-pronged attack on IP CTS service quality. First, insofar as quality service is costly to provide, a reduction in the reimbursement rate may increase pressure to reduce service quality in order to cut costs. Indeed, drastic and immediate reductions in quality may be necessary for some providers to remain viable.

Second, without price competition, providers compete for users on the basis of quality of service, meaning reductions in competition will likely result in an overall reduction in quality. Indeed, the Commission has recognized that quality of service improves when there is competition among providers.[10] The reverse is true as well – service quality suffers when competition is reduced. Rate reductions, particularly on the massive scale imposed by the Commission as of July 1, 2018, will reduce competition because providers (particularly smaller providers) are unable to compete efficiently at bare minimum reimbursement rates, and may even be forced to exit the market completely, as happened with IP Relay.[11]

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[10] *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order, 32 FCC Rcd 5891, 5907 ¶ 31 (rel. July 6, 2017) ("[T]he continuing presence of such competitive offerings is likely to encourage the lowest-cost provider to maintain higher standards of service quality than if it faced no competition. Thus, if [the Commission] were to allow VRS competition to be extinguished, for the sake of increasing the efficiency of VRS, we would risk depriving users of functionally equivalent VRS."), *aff'd Sorenson Communications v. FCC* (D.C. Circuit July 24, 2018) (No. 17-1198).

[11] If IP CTS is reimbursed at the average provider cost, it is possible to reduce the market to a single provider. This is because the low-cost provider is also the largest provider, and the remaining providers have similar costs to one another. To illustrate this point, assume that the low-cost provider has 50% of the market and the remaining four providers have 50% of the market. Further assume that the cost incurred by the low-cost provider is C_1, and the remaining five providers all have a higher cost of C_2. It is straightforward to recognize that the average cost will be halfway between C_1 and C_2, which is necessarily more than the low-cost provider's cost and necessarily less than the costs incurred by *all* other providers. If this were the reimbursement rate, all but the low-cost provider would be forced to exit the market, leaving the low-cost provider to capture the entire market and be reimbursed for doing so at a rate that is necessarily in excess of its costs. So long as there is some difference between the larger, low-
(continued)…

Moreover, it is important to recognize that quality-based competition is likely to lead to future costs savings because of the way such competition incentivizes innovation. At the rate prior to July 1, 2018, IP CTS providers had the resources and competitive incentive to introduce innovative quality improvements and cost savings. In contrast, the drastically reduced interim rate (with another significant rate cut to follow in less than a year) imperils the ability of IP CTS providers to introduce such improvements. Providers have reduced incentive under the new rates to invest in research and development which could lead to future cost savings through improved and more efficient service.[12] Hence, by reducing competition, the Commission is trading future, long-run cost savings for short-run cost savings.

In sum, a drastic rate change forces providers to do anything needed to reduce costs, and creates the incentive to sacrifice superior quality for the bare minimum, while also reducing a provider's means by which to maintain quality standards. Hence, the reduced rate will have a compounding negative effect on quality. This is a relevant issue even in light of the Commission's mandatory minimum standards. A reduction in the competitive forces that apply upward pressure on quality will force providers to focus on costs to the exclusion of other factors, including quality. Moreover, upward pressure on quality stemming from competition can have dynamic effects that reduce long-run provision costs. This is because, as stated previously, with competition, providers will be incentivized to innovate, which will likely lead to efficiency-enhancing technological improvements. Rather than focusing on service quality,

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cost provider and the other providers, this negative cycle of losing the highest cost providers will develop.

[12] Moreover, as the Commission is well aware, a cost-based rate methodology perversely leads to a reduced incentive to control costs. It is for this reason that the Commission has moved away from cost-based methodologies generally.

providers are incentivized by these rate reductions to focus instead on economic viability while meeting bare mandatory minimum standards.[13]

In addition to the tradeoff between short-run and long-run cost savings that is implicit in reduced quality-based competition, a similar tradeoff must also be considered when linking reimbursement rates to costs.

By linking reimbursement rates to costs, the Commission may realize short-term cost savings to the TRS Fund, but it is doing so at the expense of the TRS Fund's long-term health and sustainability. This is because, similar to the negative feedback loop between loss of competition and quality of service, providers will no longer have the incentive or the means by which to engage in cost-saving innovation. Linking reimbursement to costs disincentivizes providers from engaging in costly research and development in order to reduce costs. Despite the Commission's claims to the contrary,[14] this is true even in the face of multi-year rates. That is because when reimbursement is linked to costs, providers' future returns will decrease if they decrease costs. Hence, the decision faced by providers will be either 1) take the socially optimal level of action to reduce expenses and realize increased margins for the contemporaneous rate period, but decrease the level of returns in all future rate periods; or 2) take no action, accept the margins in the contemporaneous period, and maintain higher returns for future periods. In actuality, the decision will likely land somewhere in between the two options with providers willing to reduce costs to some extent, but not to the full extent they could under a better aligned set of incentives. The Commission has proposed using multi-year rates to prevent this problem.

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[13] As Sprint notes, the Commission could instead seek comment on these issues in the *Further Notice* so that it can obtain "concrete information regarding whether [providers] would have to decrease service quality or, worse yet, exit the market if the proposed 'cost-based' methodology were adopted." Sprint Rate Petition, at 5.

[14] *Report and Order*, ¶ 28.

However, while multi-year rates may shift the calculus slightly, they do not fully realign incentives. For example, instead of facing the decision of increased margins for one year at the expense of a perpetual reduction in returns, providers would need to consider increased margins in, say, two years (or whatever the rate period is) at the expense of the same perpetual reduction in future returns.

Ultimately, using costs to set rates, even if those costs were correctly and appropriately tabulated, results in misaligned incentives for providers. Because these incentives exist, the Commission's choice to employ a cost-based rate can be fundamentally distilled to a tradeoff between the short-term benefit of lower costs now versus the expense of higher costs later. At a minimum, the Commission should analyze the net long-run effects on the health of the TRS Fund represented by this tradeoff before implementing policy.

Finally, the Commission argues that CTS provision costs are no longer representative of IP CTS provision costs because the production scale of the two has diverged. Although a divergence in *scale* has occurred, this need not be (and is not in the current case) indicative of a substantial divergence in *costs*. To understand this, it is useful to understand that economies of scale are generated through the ability to share fixed costs across more units of production and the specialization of labor allowed by higher production levels. However, there exist effective limits to economies of scale where increased production levels will produce only minimal (if any) efficiency gains. For example, if a provider were to go from servicing, say, 10 million minutes to servicing 20 million minutes, the efficiency gains would be dampened by the fact that, in addition to the variable costs that go along with the increased volume (e.g., additional CAs), the provider would need to incur additional fixed costs to open an additional call center, employ more management staff, etc. Hence, the relationship between scale and cost is not linear,

nor is it continuously decreasing.[15] Ultimately, the Commission has not shown a divergence in *provision costs* between CTS and IP CTS, but instead has assumed without analysis that such a divergence exists based solely on the divergence in *scale*. The Commission's assumed link between the respective costs and scale of CTS and IP CTS would only be appropriate if CTS were not independently operating at an efficient scale, and if fixed costs were not shared between CTS and IP CTS. Since there is no evidence that CTS is independently operating at an inefficient scale, and fixed costs are in fact broadly shared between CTS and IP CTS, the Commission's assumption is inappropriate.

For these reasons, the Commission should restore the incentive for providers to continue improving quality of service, and maintain competition in the IP CTS market, by reinstating the previous IP CTS rate until the Commission resolves the compensation issues that have been raised in the *Further Notice*.

II. The *Declaratory Ruling* Was Procedurally Deficient and Requires Notice and Comment

Sprint correctly explains that the Commission's decision to bypass rulemaking procedures in recognizing ASR-only as compensable IP CTS violates not only the notice and comment requirements under the Administrative Procedure Act ("APA"), but even the Commission's own rules governing rulemaking proceedings.[16] Accordingly, the *Declaratory Ruling* was procedurally deficient and should not be enforced until the Commission has engaged in a rulemaking proceeding concerning ASR-only IP CTS.

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[15] Not only is it not linear, but the returns are diminishing as volumes increase. Once a provider reaches a certain point of efficiency, the relationship between volume and cost per unit becomes linear. At some point, a doubling in volumes results in a doubling in costs, because there are no more efficiencies to be gained – the provider is simply repeating the same costs.

[16] *See* Sprint ASR Petition at 18-20; 5 U.S.C. § 553. As Hamilton has noted, the *Declaratory Ruling* is not the "logical outgrowth" of the 2013 NPRM or the proceedings to date. May 24 *Ex Parte*, at 2-3 & n.3 (citing relevant caselaw).

As an initial matter, both the APA and the Commission's rules require that substantive rule changes require a notice-and-comment period, subject to limited exceptions that must be articulated.[17] Hamilton previously explained that the *Declaratory Ruling* constitutes a substantive rule change because it does more than "merely track preexisting requirements and explain something the statute or regulation already required," and instead "effects a substantive regulatory change to the statutory or regulatory regime."[18] Any action by the Commission in recognizing a new technology to be a compensable form of TRS amounts to a substantive change to its regulations.[19] Moreover, all forms of IP CTS to date have required human participation via a Communications Assistant ("CA"), as reflected in the plain language of the Commission's rules.[20] Contrary to the plain language of the rules, the *Declaratory Ruling* improperly concluded that a CA is no longer required to be on *any* IP CTS call using ASR. This novel interpretation of IP CTS, which essentially removes the CA requirement from the rules, clearly amounts to a substantial change to existing regulations, despite the Commission's suggestion that it does not.[21]

[17] *See* Sprint ASR Petition at 18-20.
[18] May 30 *Ex Parte* Notice, at 2 (citing *Mendoza v. Perez*, 754 F.3d 1002, 1021 (D.C. Cir. 2014) (alterations and internal quotation marks omitted)).
[19] *See* Sprint ASR Petition at 15-16.
[20] *Declaratory Ruling*, at n. 190 (admitting "the fact that the Commission's TRS rules contain numerous references to CAs"); *see also* 47 C.F.R. § 64.601(a)(16); *id.* § 64.604; *id.* § 64.605(a)(2).
[21] *See Mendoza*, 754 F.3d at 1021 ("To be interpretive" and thus exempt from notice-and-comment rulemaking, "a rule 'must derive a proposition from an existing document whose meaning compels or logically justifies the proposition.'") (quoting *Catholic Health Initiatives v. Sebelius*, 617 F.3d 490, 494 (D.C. Cir. 2010)).

The Commission was required to provide parties with adequate notice of the change and an opportunity to comment on the proposed change, which it did not do.[22] Specifically, the APA requires the Commission to provide notice that "allows interested parties to offer informed criticism and comments."[23] Just as the Eighth Circuit Court of Appeals recently found that the Commission needed to provide adequate notice of its intent to treat two services differently, the agency was required in this instance to provide prior notice of its proposal to interpret the rules as not requiring a CA to be on a relay call, notwithstanding the plain language of the rules.[24] The *2013 Further Notice* did not provide such notice, nor did the inclusion of the *Declaratory Ruling* in the publicly released draft.[25] Accordingly, the Commission must cure this deficiency by providing adequate notice of its intention to change its rules and recognize ASR-only IP CTS as a compensable form of TRS.

The *Declaratory Ruling* also gives rise to serious and unresolved legal questions that demonstrate that it was not the product of reasoned decision making, and which underscore the

[22] The Commission cannot rationally argue that the release of the draft *Declaratory Ruling* constituted adequate notice. An appeals court recently rejected that argument. *Citizens Telecommunications Co. of Minn., LLC v. FCC*, at 19-20 (8th Cir. Aug. 28, 2018) (No. 17-2342) ("[W]e do not believe that the FCC providing a few weeks to review [a draft item] cured the deficient notice . . . .").

[23] *Id.* at 13 (citing *Missouri Limestone Producers Ass'n, Inc. v. Browner*, 165 F.3d 619, 622 (8th Cir. 1999) (internal quotation marks omitted)).

[24] *Citizens Telecommunications Co. of Minn., LLC v. FCC*, at 18.

[25] *Id.* at 20 (the "early release of a draft order does not cure the harm from inadequate notice"). The court also noted that agencies "cannot bootstrap notice from a comment." *Id.* at 21 (citing *Shell Oil Co. v. EPA*, 950 F.2d 741, 760 (D.C. Cir. 1991)). The court concluded that "[t]he APA requires interested parties wishing to play a role in the rulemaking process to comment on the *agency's* proposals, not on other interested parties' proposals." *Citizens Telecommunications Co. of Minn., LLC v. FCC*, at 21 (emphasis in original).

need for rulemaking procedures to "ensure[] fairness to affected parties and provide[] a well-developed record" prior to taking the proposed action.[26] For example:

- The item failed to articulate any standards by which the Consumer & Governmental Affairs Bureau ("Bureau") can conclude that fully-automated ASR can satisfy the Commission's requirements without any human intervention.[27] Moreover, the Commission created a paradox, directing the Bureau to approve providers of ASR-only IP CTS if they meet the mandatory minimum standards under the Commission's rules, standards which *require* human intervention through a CA. Agency action is arbitrary and capricious when, as here, it "entirely fail[s] to consider an important aspect of the problem" it faces.[28]

- As noted in the *ex parte* submissions by consumer groups,[29] the *Declaratory Ruling* left open how ASR providers' envisioned collection, storage, and use of the content of a user's speech to improve the technology[30] can be harmonized with the confidentiality and privacy provisions applicable to such content.[31] It was not enough for the *Declaratory Ruling* to simply state that such content will be "kept confidential."[32] The Commission is required to provide a reasoned explanation for how its proposed rule will uphold these confidentiality protections; "conclusory statements cannot substitute for the reasoned explanation."[33]

Finally, the decision to authorize a new form of TRS without first providing a meaningful opportunity for notice and comment was an abrupt and unexplained departure from the agency's

[26] *Sprint Corp. v. FCC*, 315 F.3d 369, 373 (D.C. Cir. 2003) (internal quotation marks omitted).
[27] *See Ex Parte* Letter from Blake E. Reid, Counsel for Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, CG Docket Nos. 03-123, 13-24, at 2 (filed July 26, 2018) (noting that the *Declaratory Ruling* "leaves unclear how the Commission will *apply* the changed rule in evaluating ASR applicants, deferring the development of performance goals and measures—which should be critical components of evaluating all types of IP CTS providers—not even to the *FNPRM*, but to an *NOI* whose resolution may be years away") ("July Consumer Groups *Ex Parte*").
[28] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
[29] July Consumer Groups *Ex Parte*, at 5; May Consumer Groups *Ex Parte*, at 3.
[30] *Declaratory Ruling* ¶ 63.
[31] 47 C.F.R. § 64.604(a)(2); *see also* 47 U.S.C. § 225(d)(1)(F) (requiring TRS call confidentiality).
[32] *Declaratory Ruling* ¶ 60 & n.197.
[33] *AT&T Corp. v. FCC*, 236 F.3d 729, 737 (D.C. Cir. 2001).

longstanding precedent.[34] When the Commission has previously recognized a new form of compensable TRS, it has provided public notice and an opportunity to comment prior to doing so.[35] "The FCC cannot silently depart from previous policies or ignore precedent . . . ."[36] The Commission's conclusory statement that it merely disagrees with Hamilton's view that notice-and-comment was necessary only makes the silence more glaring.[37] Indeed, "an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored."[38] In contrast to these prior orders, in which the Commission developed a detailed record following public comment, the *Declaratory Ruling* relies on a single study and unsubstantiated assertions made by two companies that have pending IP CTS certification applications contemplating the use of ASR-only technology. Thus, in contrast to the Commission's prior TRS orders, and in light of the substantial concerns noted

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[34] *See* Sprint ASR Petition at 16-17 (explaining how "the precedents cited in the *Declaratory Ruling* do not support the Commission's decision").

[35] *See 2008 IP STS Order*, 23 FCC Rcd. 10663, 10667, ¶ 12 (June 24, 2008) (tentatively concluding that IP STS is form of TRS compensable by the Fund after the request to do so "was placed on Public Notice and one comment and one reply were filed"); *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd 379, 386-87, ¶¶ 17-18 (Jan. 11, 2007) (concluding on an interim basis, after placing a petition on public notice and receiving comments, that IP CTS constitutes TRS service compensable by the fund); *2003 CTS Declaratory Ruling*, 18 FCC Rcd 16121, 16123, ¶ 6 (Aug. 1, 2003) (recognizing enhanced captioned telephone VCO service as a form of TRS after having placed the petition following a public notice and receipt of comments); *2002 IP Relay Declaratory Order*, 17 FCC Rcd 7779, 7781-83 (Apr. 22, 2002) (issuing declaratory order that IP relay qualifies as compensable TRS following notice and a comment period); *2000 TRS Report and Order*, 15 FCC Rcd 5140, ¶¶ 15-20, 21-27 (2000) (recognizing STS and VRS as forms of TRS eligible for compensation from the fund following notice and comment period).

[36] *AT&T Corp.*, 236 F.3d at 736.

[37] *Declaratory Ruling*, at n.184 (disagreeing with the procedural objections Hamilton raised leading up to the adoption of the *Declaratory Ruling*, but failing to explain why a declaratory ruling, with no prior notice, was the proper vehicle to determine that ASR-only IP CTS is compensable from the TRS Fund).

[38] *AT&T Corp.*, 236 F.3d at 737 (quoting *Comm. for Cmty. Access v. FCC*, 737 F.2d 74, 77 (D.C. Cir. 1984)).

above, the Commission's authorization of ASR-only cannot stand on the current administrative record.[39]

III. Procedural and Substantive Safeguards Are Critical to Any Analysis of IP CTS Providers Proposing to Rely Exclusive on ASR

In any event, Hamilton strongly supports Sprint's request that the Commission clarify that it will "implement safeguards" to ensure functional equivalence of ASR-only IP CTS.[40] Importantly, the Commission should seek comment on all ASR-only certification applications to develop a detailed record confirming that the proposed ASR-only service "meet[s] the explicitly high bar imposed by Section 225, including input from consumers, [which] is critical to preventing failures."[41] Further, such applications must demonstrate that the ASR-only service "will provide service that is no less usable by the hard-of-hearing community than today's IP CTS offerings."[42] To evaluate applications, the Commission should seek comment on the adoption of the "Temporary Application Framework" suggested by Consumer Groups.[43]

[39] *Northpoint Tech., Ltd. v. FCC*, 412 F.3d 145, 147 (D.C. Cir. 2005).
[40] Sprint ASR Petition at 3-11; *see also* July Consumer Groups *Ex Parte* at 2-7.
[41] July Consumer Groups *Ex Parte* at 2-3.
[42] Sprint ASR Petition at 7.
[43] July Consumer Groups *Ex Parte* at 3-7.

IV. Conclusion

For the foregoing reasons, Hamilton urges the Commission to reinstate the IP CTS rate in effect prior to July 1, 2018 until the Commission assesses the comments in response to the *Further Notice* and renders a decision on the record. Further, Hamilton reiterates that *all* issues related to ASR-only service—particularly those related to service quality and privacy—should be resolved prior to allowing ASR-only IP CTS providers to operate. If the Commission proceeds with considering ASR-only applications, it should first seek comment on using the Temporary Application Framework proposed by Consumer Groups.

Respectfully submitted,

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